19 Pac. 190. The proper interpretation seems to be, however, that the usual equity rule is declared. See *Phelan* v. *Neary*, 22 S. Dak. 265, 117 N. W. 142; *Prince* v. *Lamb*, 128 Cal. 120, 60 Pac. 689; *White* v. *Sage*, 149 Cal. 613, 87 Pac. 193. This interpretation would seem clear when the statute, as in the principal case, provides that mere inadequacy of price "may justify" a court in refusing to decree specific performance. It has been held that a statute such as those cited above places the burden upon the plaintiff of alleging facts in his declaration which affirmatively show adequacy of consideration. *White* v. *Sage, supra*. But it seems more reasonable to hold that inadequacy of consideration is a matter of defense. *Finlen* v. *Heinze*, 28 Mont. 548, 73 Pac. 123. In the principal case there are no circumstances alleged which give rise to an inference of hardship or unfairness. It would seem, therefore, that the demurrer should have been overruled.

TAXATION — LOCAL ASSESSMENT FOR "STOCK LAW FENCES" — DIVERSION TO GENERAL FUND. — A statute authorized a county to sell its "stock law fences," now no longer necessary, and directed that the proceeds, as well as the surplus of the stock law fund, should be returned to the general fund of the county. When the fences were built, assessments had been imposed upon landowners in that portion of the county where the fences were located. These landowners seek to have the proceeds of the sale and the surplus distributed among themselves alone, attacking the statute as unconstitutional. *Held*, that the statute is constitutional. *Parker* v. *Board of Commissioners of Johnston County*, 100 S. E. 244 (N. C.).

The taxes with the proceeds of which the fences had been built were in the nature of local assessments. *Cain* v. *Commissioners of Davie County*, 86 N. C. 8. Such assessments are not taxes within the equality and uniformity provisions of the state constitutions. *Arnold* v. *Mayor, etc. of Knoxville*, 115 Tenn. 195, 90 S. W. 469; *City of Auburn* v. *Paul*, 84 Me. 212, 24 Atl. 817; *City of St. Joseph* v. *Owen*, 110 Mo. 445, 19 S. W. 713. But assessments must be apportioned according to benefits; and by the weight of authority constitutional provisions which forbid the taking of property without due process of law make such apportionment mandatory. *White* v. *City of Tacoma*, 109 Fed. 32; *Erie* v. *Russell*, 148 Pa. St. 384, 23 Atl. 1102. See *Stuart* v. *Palmer*, 74 N. Y. 183, 189. See 1 PAGE AND JONES, TAXATION BY ASSESSMENT, § 118. If the money has been collected by assessment, but not expended, and the improvement abandoned, the persons assessed have a right to a refund. *McConnville* v. *City of St. Paul*, 75 Minn. 383, 77 N. W. 993. See *Bradford* v. *City of Chicago*, 25 Ill. 411, 416. And a similar right exists where there is a surplus. See *City of Chicago* v. *McCormick*, 124 Ill. App. 639, 640; *Cleveland* v. *Tripp*, 13 R. I. 50, 64. But if the proceeds have been used for the designated purpose, the person complaining cannot recover, even though the expected benefit has not accrued to him. *Germania Bank* v. *City of St. Paul*, 79 Minn. 29. The principal case seems doubtful, unless the decision can be rested upon the ground that, in view of the small amount involved, distribution among the property owners would be inexpedient and would yield almost nothing. It has been held that the constitutional requirement that taxes shall be uniform applies to their levy, and not to their distribution after they have been raised. *Kerr* v. *Perry School*, 162 Ind. 310, 70 N. E. 246; *Holton* v. *Mecklenburg County Com'rs*, 93 N. C. 430.

TAXATION — PARTICULAR FORMS OF TAXATION — TRANSFER TAX — TRANSFER TO TAKE EFFECT AT DEATH. — An uncle, retiring from a partnership in which he and his nephew were the only members, gave up to his nephew a debt which the partnership owed him, upon the nephew's promise to leave the money in the business and pay him two per cent on the amount until his death.

A statute provided that transfers of decedent's property made in contemplation of death or intended to take effect in possession or enjoyment at or after such death should be subject to transfer tax. (1914 N. J. P. L. 267.) *Held*, that the transfer was not subject to the tax. *Wolf et al.* v. *Comptroller of Treasury of N. J.*, 105 Atl. 871 (N. J.).

A gift *inter vivos* not made in contemplation of death is not taxable. *Matter of Spaulding*, 49 App. Div. 541, aff'd 163 N. Y. 607, 57 N. E. 1124. But a transfer reserving a life estate to the grantor is taxable as intended to take effect at death. *In re Keeney's Estate*, 194 N. Y. 281, 87 N. E. 428; *Carter* v. *Bugbee*, 91 N. J. L. 438, 103 Atl. 818. Such a transfer for consideration is not taxable. *Blair* v. *Herold*, 150 Fed. 199. But a transfer in return for a promise to pay interest no greater than the income of the property transferred is not supported by consideration. *In re Estate of Reynold's*, 169 Cal. 600, 147 Pac. 268. In substance, the grantor is reserving for himself a life income and the enjoyment of the grantee is postponed until the grantor's death. This is precisely the situation the statute was designed to cover. See 28 HARV. L. REV. 437. To reason as the court did in the principal case that the transfer was a gift and the nephew's promise an independent undertaking involves the difficulty of a waiver of a debt and a promise without consideration, and overlooks the fact that the agreements were in exchange for each other. Nevertheless, where the interest rate is low, it might well be held that the grantee's enjoyment begins presently as to all but the part necessary to earn the required income. *People* v. *Kelley*, 218 Ill. 509, 75 N. E. 1038. The case might be supported upon the narrow ground that the promise to leave the money in the business imposed a risk which would render the nephew's undertaking adequate consideration.

TENANCY IN COMMON — LEASE BY COTENANT — RIGHT OF A COTENANT TO ASSIGN HIS RIGHTS TO THE USE OF A SPECIFIC PART OF PREMISES. — In a prior suit by the present plaintiff against the present defendant, a lease made to the defendant by several of the plaintiff's cotenants to which the plaintiff did not assent was declared void. The lessors were not made parties to that suit. The plaintiff now brings ejectment against the defendant, who admits the lease is void against the plaintiff, but claims that, under it, he is entitled to the same rights in the particular premises that his lessors had. *Held*, that ejectment cannot be maintained. *Pastine* v. *Altman*, 107 Atl. 803 (Conn.).

Attempts by one cotenant or by any number less than all the cotenants to dispose of the interests of the other cotenants are void as to them. *Waring* v. *Crow*, 11 Cal. 366; *Murley* v. *Ennis*, 2 Colo. 300. A lease by one cotenant dealing with all or with a definite portion of the land held in common is not binding on the cotenants who do not join in making it and do not accept its benefits. *Mussey* v. *Holt*, 24 N. H. 248; *Southern Inv. Co.* v. *Postal Telegraph Cable Co.*, 156 N. C. 259, 72 S. E. 361. Under such a lease the lessee can claim no exclusive rights, because his lessor had no right to demand that the particular part leased should be set off to him in case of partition. *Dorn* v. *Dunham*, 24 Tex. 366; *Marks* v. *Wakeman*, 107 Ill. 251. But a cotenant's ownership includes the privilege of exercising the right of the remaining cotenants to occupy and use the premises. See *Gage* v. *Gage*, 66 N. H. 282, 291, 29 Atl. 543, 547. See also *Rising* v. *Stannard*, 17 Mass. 282, 284. And a cotenant may authorize another to do whatever he himself might lawfully do with respect to the common premises. *Buchanan* v. *Jenks*, 38 R. I. 443, 96 Atl. 307; *Baker* v. *Wheeler*, 8 Wend. (N. Y.) 505. Accordingly some courts have given practical effect to leases by one or a part of the cotenants by considering them as licenses to use the specified premises, subject to the same conditions of cotenancy under which the lessor himself might have used them. *Stark* v. *Barret*, 15 Cal. 361; *Rising* v. *Stannard*, *supra*. This seems to be the rationale of the principal case.